IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.7740 of 2005

Dhara Packaging Ltd. & ors. Petitioners
Vs.
Punjab National Bank Respondent

Ms.B.P.Jakhade for petitioners.
Mr.Pankaj Vijayan for resp.no.1.

CORAM: B.H.MARLAPALLE & J.H.BHATIA,JJ.

November 13, 2006.

P.C.

. Heard the learned counsel for the petitioner.

This petition arises from the decree passed by the learned Presiding Officer of the Debts Recovery Tribunal-II, Mumbai in Original Application No.1953 of 1999. By the said decree dated 30/3/2001 the claim of the respondent - Bank was allowed for the recovery of an amount of Rs.81,90,856/- and interest at the rate of 18.36 % per annum with quarterly rests from the date of filing of the Original Application till realisation. This decree came to be challenged in Appeal No.55 of 2003 and the same has been dismissed by the learned Chairperson of the Appellate Tribunal.

. There is no dispute that the petitioner - Company was granted a loan of Rs.40 lakhs and by the

letter dated 24/10/1997 the respondent - Bank pointed out that against the sanctioned limit of Rs.40 lakhs, the debit balance of Rs.53,39,353-62 was shown and, therefore, the petitioner - company was called upon to regularise the account, while reminding about the earlier reminders in that regard. Ultimately the Bank had no alternative but to file Original Application No.1953 of 1999 for the recovery of Rs.81,90,856/-.

. The present petitioners while opposing the Original Application put up a counter-claim for the recovery of Rs.351 crores from the Bank on the grounds that because of the Bank's breach of contract or the failure to maintain its commitment to sanction an additional amount of Rs.12 lakhs towards the bid bond, the company faced losses in profit, its reputation and by way of actual expenses. The Tribunal noted that this claim was made on the basis of the so called oral promise made by an officer of the Bank whose name was not disclosed. No evidence was placed before the Tribunal in support of the Bank's commitment or its promise for sanction of Rs.12 lakhs for bid bond by way of additional facility. Letters of the Bank and which were marked

at Exhibit 45 were considered by the Tribunal and it was very clearly stated that these letters would not amount to or in fact did not state about any promise to sanction such an amount. Notwithstanding these claims and counter-claims, it is clear that the petitioner - company could not bring before the Tribunal any documentary proof that such an additional facility of Rs.12 lakhs was sanctioned by the Bank and, therefore, the counter-claim was rightly dismissed.

. So far as the recovery claim of the Bank is concerned, the Recovery Tribunal had gone into the details of the sanction of Rs.40 lakhs and the overdrawing done by the petitioner - company coupled with the failure to repay the loan amount under the pretext that due to the Bank's own actions the company suffered heavy losses as it did not get the tender in its favour though it had submitted the lowest bid. This lame defence could not defeat the recovery application and both the Courts below i.e. the Recovery Tribunal as well as the Appellate Tribunal have considered the Bank's claim viz-a-viz the defence of the company and the lower Appellate Authority has rightly confirmed the decree. We do

not see any apparent error on the face of record or any element of perversity in the impugned orders so as to entertain this petition.

. Hence the petition fails at the threshold and the same is hereby rejected summarily.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)